

GEOSEARCH, INC.

IBLA 79-39 Decided January 16, 1979

Appeal from decision of the Wyoming State Office, Bureau of Land Management, dismissing protest to issuance of oil and gas lease W 64074.

Affirmed as modified.

1. Oil and Gas Leases: Applications: Sole Party in Interest—Words and Phrases

"Interest." Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client, strictly at the client's option, in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. In such circumstances, the service does not have an "interest" in the lease, so that the client/offeror is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying.

2. Oil and Gas Leases: Applications: Drawings

A protest against the issuance of an oil and gas lease is properly dismissed where it is based on vague allegations of impropriety in a relationship between a leasing service and its client and is unsupported by facts showing that the successful drawee should have been disqualified, as the protestant has failed to meet his burden of showing with competent proof that there has been a violation of applicable regulations which would disqualify the offer.

3. Oil and Gas Leases: Bona Fide Purchaser—Oil and Gas Leases: Cancellation

Under 43 CFR 3102.1-2(a), BLM properly dismisses a protest and refuses to cancel an oil and gas lease which has been assigned to a bona fide purchaser prior to the initiation of the protest, regardless of the truth of allegations that the lease was subject to cancellation because the offeror/assignor's original offer was defective under 43 CFR 3102.7 and 3112.5-2.

APPEARANCES: Melvin E. Leslie, Esq., Salt Lake City, Utah, for appellant/protestant; Thomas W. Ehrmann, Esq., and William R. Hamm, Esq., for Resource Services Company, Inc.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

William C. Ridgway filed a simultaneous noncompetitive oil and gas lease offer drawing entry card for parcel WY 52 in the May 1978 drawing in the Wyoming State Office, Bureau of Land Management (BLM), which card was drawn with first priority. On June 16, 1978, as Ridgway's offer appeared to have been filed for him by Fred Engle, d/b/a Resource Services Company, Inc. (RSC), BLM notified Ridgway that it required additional information concerning the details of the agreement between him and RSC so that it might verify that his offer did not violate 43 CFR 3102.7 and 3112.5-2, the regulations regarding sole party in interest and multiple filings.

On June 29, 1978, Ridgway filed this information, including a copy of a memorandum of his agreement with RSC, which provides in part as follows:

SALES AGENCY AVAILABLE

When I win a drawing, R.S.C. provides at my option, the service to sell the rights I have won. This agency contract for sale is available only after the drawing is completed. Any final negotiated price is subject to my approval. If I utilize R.S.C.'s agency contract for sale and they or I obtain a buyer during the 5-year term of the contract, I understand the service fee to R.S.C. is as follows:

OUTRIGHT SALE OF OIL & GAS RIGHTS

\$1 to \$100,000.00 ----- Service fee to R.S.C. 16%
 Over \$100,000.00 ----- Service fee to R.S.C. 12%

IN EVENT OF ROYALTY PAYMENTS

\$1 to \$100,000.00 Annually Service fee to R.S.C. 16%
 Over \$100,000.00 Annually Service fee to R.S.C. 12%
 If I do not receive at least \$10,000 gross in aggregate from a sale negotiated by R.S.C., they will process up to 300 additional applications which I may choose to make free of their service charge.
 [Emphasis supplied.]

This memorandum bears Ridgway's signature and the notation that he authorized it on April 26, 1978, prior to the submission of his offer card by RSC. A marginal note on the memorandum indicates that it replaces the agreement currently in effect.

BLM apparently concluded that this information revealed no impropriety with Ridgway's offer, as it notified him on July 12, 1978, that annual rental was due, and following his submission of this rental, issued lease W 64074 to him on July 31, 1978.

On August 22, 1978, Ridgway assigned 100 percent of his record title to lease W 64074 to the Northern Natural Gas Company, subject to a 5 percent overriding royalty of production payments reserved to him.

On September 18, 1978, Geosearch, Inc., filed a protest to the issuance of this lease to Ridgway. Geosearch had purchased the interest of Paul Pilon, whose drawing entry card was drawn with second priority in the May 1978 drawing for parcel WY 52, and so asserted an interest in disputing the issuance of this lease. ^{1/} The protest noted as follows:

[T]here are numerous cases pending at the IBLA and a case pending (C 78-104) in the U.S. District Court in Cheyenne, Wyoming, that may result in a determination that the relationship of Mr. Engle and his clients constituted violations of the regulations regardless of the specific wording of service or agency agreements.

^{1/} Pilon's offer was never rejected by BLM. If his offer had been rejected at the time the lease issued on July 31, 1978, Pilon would have had 30 days in which to file notice of appeal, failing which the rejection would have become final, leaving no "interest" to be acquired by Geosearch. 43 CFR 4.411. However, as he was not notified by BLM that his offer was rejected, the appeal period never commenced.

Geosearch advised that it would be seeking a determination that an agency relationship existed between Engle and "many of his clients" for purposes of selling lease interests and also filed information suggesting that RSC had sold lease W 64074 for Ridgway. Geosearch stated that it was protesting because evidence submitted with the protest showed "that the relationship between Mr. Engle and Mr. Ridgeway [sic] with respect to Mr. Ridgeway's [sic] filing of lease W 64074 was different than the service agreement dated April 26, 1978." Finally, Geosearch requested that the sale of this lease by Ridgway to Northern Natural Gas Company be rescinded and that the proceeds of this sale be placed in escrow.

On September 22, 1978, BLM wrote Geosearch a letter denying its protest because there is an action pending before the District Court in Wyoming concerning RSC. BLM noted that it would not issue leases to any other clients of RSC or approve any assignments filed by them until this court action is finally settled. BLM, which had not yet been informed of the pending assignment to Northern Natural Gas, declined to take any action concerning the sale of the lease.

On September 27, 1978, Northern Natural Gas filed the assignment dated August 22 for the approval by BLM, along with several documents concerning the underlying sale of the lease to it. ^{2/} Despite having indicated that it would not do so in its letter decision of September 22, on October 12, 1978, BLM approved this assignment, effective October 1, 1978, although the court case in question had not yet been resolved. BLM's reason for so doing was apparently that the Regional Solicitor advised that Northern Natural Gas is a bona fide purchaser of Ridgway's lease, as indicated in a notation to this effect in the record dated October 11, 1978, by Glenna M. Lane, Chief of BLM's oil and gas section.

On October 23, 1978, Geosearch filed a notice of appeal of BLM's letter decision of September 22 denying its protest against the issuance of this lease to Ridgway, despite BLM's failure to inform it of its right of appeal in this decision.

[1] The agreement between Ridgway and RSC which was in effect at the time the offer was filed here created no "interest" in RSC which

^{2/} These documents reveal that some time shortly after the drawing, Northern Natural Gas offered to buy Ridgway's lease in a letter mailed to the address on his offer card, which was that of RSC. On June 28, 1978, Northern Natural Gas mailed Ridgway a letter noting that Engle had advised it that Ridgway had agreed to accept its offer and asking for endorsement of a statement that he had in fact so accepted. On July 7, Ridgway signed this confirmation and submitted it to Northern Natural Gas, which then prepared assignment forms which Ridgway and Northern Natural Gas executed on August 22 and September 21, respectively.

Ridgway was required to disclose under 43 CFR 3102.7, or which might have resulted in RSC's having filed multiple offers for parcel WY 52 in violation of 43 CFR 3112.5-2. Where an oil and gas leasing service selects lands, files offers, and advances funds on behalf of its clients for leases which the service is willing to sell on behalf of any successful client strictly at the client's option in return for a percentage commission on the sale, the service has no enforceable right to any portion of the lease, if issued. 43 CFR 3100.0-5(b); Virginia L. Jones, 34 IBLA 188, 193 (1978); Harry L. Matthews, 29 IBLA 240, 242 (1977); R. M. Barton, 4 IBLA 229, 232 (1972); John V. Steffens, 74 LD. 46, 53 (1967). Thus, in such circumstances, the service does not have an "interest" in the lease, so that the client/offeree is not precluded from stating that he is the sole party in interest to the offer, and the filing of offers for the same parcel by other clients of the service is not disqualifying. 43 CFR 3102.7, 3112.5-2; Virginia L. Jones, *supra*; Harry L. Matthews, *supra*; R. M. Barton, *supra*; John V. Steffens, *supra*.

Here, the agreement between RSC and Ridgway gave Ridgway the option, after he won the lease, of having RSC arrange a sale for him in return for a specific percentage of the proceeds of the sale. As it happened, he accepted an offer presented to him by RSC. However, as the language of the agreement expressly contemplates his declining to exercise this option, he could have declined to accept this or any other offer arranged by RSC without violating the terms of the agreement, and by so doing, have prevented RSC from gaining any financial benefit from the lease. 3/

Thus, at the time the lease offer was filed, RSC had merely a hope or expectancy that Ridgway would choose to accept an offer arranged by it, and that it would share in the proceeds of the lease through commission. This does not constitute an "interest." Therefore, the lease was properly issued to Ridgway as there was no violation of 43 CFR 3102.7 or 3112.5-2.

[2] Appellant's protest contains several vague allegations of impropriety in the relationship between RSC and Ridgway. These allegations are virtually unsupported by evidence, and appellant has not pursued them on appeal. 4/ It is not up to us to speculate as to

3/ The sales agreement certified by Ridgway provides that he could enter into an "agency contract for sale" if he wished to exercise his option to let RSC sell his lease. There is no evidence in the record that Ridgway ever in fact executed such an agreement here. However, this document was not essential, as Ridgway could still indicate his acceptance or rejection of the optional sale of his lease by RSC simply by either accepting or rejecting any offer which it arranged.

4/ On appeal, Geosearch has apparently misapprehended which contract is involved in this dispute, as its statement of reasons is concerned with a service contract which is not in effect here. Thus, its statement of reasons is inapposite to the matter before us.

what appellant means to contend in order to make up for the vagueness of these arguments. The burden is on the protestant to show justification for the disqualification of the successful drawee in a simultaneous filing. He must present competent proof of such violation, not merely accusations. Harry L. Matthews, supra; Georgette B. Lee, 3 IBLA 172 (1971).

In any event, appellant's arguments, even if construed in the most favorable light, are not convincing. Appellant alleged that the relationship between RSC and Ridgway was actually different than as described in the service agreement certified by Ridgway. In support of this assertion, appellant submitted an advertisement prepared by RSC following the May 1978 drawing which notes that Ridgway's lease had already been sold to Northern Natural Gas. As Ridgway plainly has the right to allow RSC to sell any lease won by him on his behalf, subject to his approval of the sale, it is not clear how appellant believes that this advertisement shows that a violation of a regulation has occurred. It is possible that appellant means to suggest either that RSC accepted the offer of Northern Natural Gas without having submitted it to Ridgway for approval, or that it forced him to accept this offer by barring his option to refuse it.

It appears likely that RSC did publish notice that the lease had been sold before Ridgway had an opportunity to approve the sale. However, this fact is irrelevant. RSC's stating that the lease was sold could not make it so, as no sale could occur under the express terms of the contract, or under the regulations of the Department, unless and until Ridgway endorsed it. The record shows clearly that Ridgway did review the offer and decide to exercise his option to accept it on July 7, 1978. While Ridgway, having been presented by RSC with this type of fait accompli, might have felt some pressure to accept the offer, he still had the absolute right to refuse it and to sell the lease without RSC's assistance, in which case RSC would not have been entitled to receive any portion of the proceeds of the lease. The fact that Ridgway declined to exercise his right not to accept an offer arranged by RSC does not indicate that he and RSC were not adhering to the terms of the agreement certified by Ridgway.

Appellant also asserted in his protest that the relationship between Engle and his clients constitutes violations of the regulations regardless of the specific wording of the service or agency agreements between them. It has never specified exactly how this is possible, but it may be suggesting that RSC is somehow defrauding its clients or otherwise interfering with their contractual rights to deal with other potential purchasers of their leases. By so doing, RSC would abnegate the optional nature of the sales provision and effectively gain a definite interest in their offers. Appellant has presented no proof of irregularities which effectively changed the nature of the agreement between RSC and Ridgway in such a way that RSC really had an interest in his offer at the time it was filed.

[3] There is another valid reason that BLM's decision should be affirmed. Under 30 U.S.C. § 184(h)(2) (1976) and 43 CFR 3102.1-2(a), the Department is prevented from canceling a lease where it has been assigned to a bona fide purchaser, even where the original lease offer was clearly defective. Southwest Petroleum v. Udall, 361 F.2d 650, 655-6 (10th Cir. 1966); Robert G. Race, 37 IBLA 162, 163; Duncan Miller, A-30600 (December 1, 1966). In the absence of any facts that suggest bad faith on the part of the assignees, this provision applies, and the lease may not be canceled despite the improprieties in its issuance. Robert G. Race, *supra* at 163-4; Duncan Miller, *supra*.

The record indicates that Ridgway sold his interest in this lease to Northern Natural Gas on July 7, 1978, and executed appropriate assignment forms on August 22, 1978. As this assignment was perfected prior to the initiation of the protest action by appellant, and there was nothing in the record indicating that there was any problem with the lease before this protest was filed, it appears that Northern Natural Gas purchased the lease without knowledge of any alleged defect with it. Thus, it is likely that Northern Natural Gas is a bona fide purchaser. In the absence of any showing to the contrary, we hold that 43 CFR 3102.1-2(a) applies, and that the lease could not be canceled even if it were voidable for having been improperly issued (which we do not find nor imply).

We conclude that BLM properly dismissed Geosearch's protest. However, the grounds asserted by BLM for doing so are incorrect. BLM dismissed the protest "since * * * there is an action pending before the District Court in Wyoming concerning Mr. Coyer, the Easterday decision, and Resource Service Company, Inc." The case to which BLM referred contained issues which are related to this protest. The appropriate action in this case would have been instead either to review and rule on the merits of the protest or suspend it pending the outcome of the court decision.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

Edward W. Stuebing
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Douglas E. Henriques
Administrative Judge

